

UIdaho Law Digital Commons @ UIdaho Law

Not Reported

Idaho Supreme Court Records & Briefs

9-17-2012

State v. Pettit Appellant's Brief Dckt. 39491

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Pettit Appellant's Brief Dckt. 39491" (2012). *Not Reported*. 530.
https://digitalcommons.law.uidaho.edu/not_reported/530

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 39491
)	
v.)	
)	
ALEX LEE PETTIT,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF TWIN FALLS

HONORABLE G. RICHARD BEVAN
District Judge

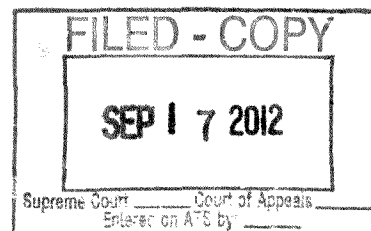
SARA B. THOMAS
State Appellate Public Defender
State of Idaho
I.S.B. #5867

ERIK R. LEHTINEN
Chief, Appellate Unit
I.S.B. #6247

JUSTIN M. CURTIS
Deputy State Appellate Public Defender
I.S.B. #6406
3050 N. Lake Harbor Lane, Suite 100
Boise, ID 83703
(208) 334-2712

ATTORNEYS FOR
DEFENDANT-APPELLANT

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534



ATTORNEY FOR
PLAINTIFF-RESPONDENT

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of the Facts and Course of Proceedings	1
ISSUE PRESENTED ON APPEAL	3
ARGUMENT	4
The District Court Erred By Requiring Mr. Pettit To Offer Irrelevant Testimony Concerning The Identity Of The Person From Whom He Purchased Marijuana In The Past	4
CONCLUSION	5
CERTIFICATE OF MAILING	6

TABLE OF AUTHORITIES

Cases

<i>State v. Shutz</i> , 143 Idaho 200 (2006)	4
--	---

Rules

I.R.E. 401.....	4
-----------------	---

STATEMENT OF THE CASE

Nature of the Case

Alex Lee Pettit appeals from his judgment of conviction for possession of a controlled substance with the intent to deliver. He asserts that the district court erred by requiring him to offer irrelevant testimony concerning the identity of the person from whom he purchased marijuana in the past.

Statement of the Facts and Course of Proceedings

On July 16, 2010, deputies from the Twin Falls Sheriff's Department obtained a search warrant for Mr. Pettit's residence. (Presentence Investigation Report (*hereinafter*, PSI, p.1.) Once inside the residence, the deputies searched a safe, in which they found marijuana, packaging supplies, a scale, and firearms. (PSI, p.2.) Mr. Pettit was charged with one count of possession of a controlled substance (marijuana) with the intent to deliver. (R., p.54.) At trial, Mr. Pettit admitted possessing marijuana, but denied that he possessed it with the intent to deliver. (Tr., p.155, Ls.21-25.) He admitted that some of the sealable bags in the safe were used to package marijuana but they were also used for meat because he was an avid hunter. (Tr., p.156, Ls.14-25.) He testified that three of the firearms were guns that his father had purchased. (Tr., p.156, Ls.12-13.) The guns were used for hunting. (Tr., p.164, Ls.21-23.) Of the money found in the safe, \$1,000 was his father's. (Tr., p.167, Ls.17-19.)

During the month of June, 2010, Mr. Pettit was smoking about "half an eighth to an eighth of marijuana a day." (Tr., p.158, Ls.1-3.) He used the scale to limit himself

and emphasized that the marijuana was for personal use. (Tr., p.159, Ls.18-25.) He did not sell or distribute his marijuana to anyone. (Tr., p.160, Ls.19-25.)

On cross-examination, the prosecutor asked Mr. Pettit where he got his marijuana. (Tr., p.177, Ls.1-2.) Defense counsel objected on the basis of relevance. (Tr., p.177, Ls.1-2.) After the court overruled the objection, Mr. Pettit responded, "just from marijuana dealers." (Tr., p.177, Ls.3-4.) When the prosecutor asked, "who?," Mr. Pettit responded, "I mean, do I have to say a name?" (Tr., p.177, Ls.5-6.) The court responded, "Yes, you do." (Tr., p.177, Ls.6-7.) Mr. Pettit then replied, "I mean, there was a number of – there was – I don't see how this relevant at all to how I – a name of my dealer is relevant to my case. I don't understand." (Tr., p.177, Ls.8-11.) Defense counsel objected again, stating, "Once again, Your Honor, I'd renew my objection as to the relevancy." (Tr., p.177, Ls.12-13.) Again, the objection was overruled. (Tr., p.177, Ls.13-14.)

Mr. Pettit then testified that he bought his marijuana from, "an older fellow named Joe." (Tr., p.177, Ls.16-18.) The prosecutor then asked about Joe's last name, where he lived, and with whom he lived; Mr. Pettit did not know most of this information. (Tr., p.177, L.20 – p.178, L.13.)

Mr. Pettit was found guilty. (R., p.240.) The district court imposed a unified sentence of five years, with three years fixed, and the court retained jurisdiction. (R., p.275.) Following the period of retained jurisdiction, the district court suspended the sentence and placed Mr. Pettit on probation. (R., p.292.) Mr. Pettit appealed. (R., p.301.) He asserts that the district court erred by requiring him to testify to the identity of the person from whom he purchased marijuana in the past.

ISSUE

Did the district court err by requiring Mr. Pettit to offer irrelevant testimony concerning the identity of the person from whom he purchased marijuana in the past?

ARGUMENT

The District Court Erred By Requiring Mr. Pettit To Offer Irrelevant Testimony Concerning The Identity Of The Person From Whom He Purchased Marijuana In The Past

Mr. Pettit asserts that the identity of the person from whom he purchased marijuana was irrelevant and that the district court erred by requiring him to testify about such information.

As set forth above, the prosecutor asked Mr. Pettit where he got his marijuana. (Tr., p.177, Ls.1-2.) Counsel objected on the basis of relevance. (Tr., p.177, Ls.1-2.) After the court overruled the objection, Mr. Pettit responded, “just from marijuana dealers.” (Tr., p.177, Ls.3-4.) When the prosecutor asked, “who?,” Mr. Pettit responded, “I mean, do I have to say a name?” (Tr., p.177, Ls.5-6.) The court responded, “Yes, you do.” (Tr., p.177, Ls.6-7.) Mr. Pettit then replied, “I mean, there was a number of – there was – I don’t see how this relevant at all to how I – a name of my dealer is relevant to my case. I don’t understand.” (Tr., p.177, Ls.8-11.) Counsel objected again, stating, “Once again, Your Honor, I’d renew my objection as to the relevancy.” (Tr., p.177, Ls.12-13.) Again, the objection was overruled. (Tr., p.177, Ls.13-14.)

Mr. Pettit asserts that the district court erred by determining that the evidence at issue was relevant. Idaho Rule of Evidence 401 defines “relevant evidence.” Under that Rule, “[r]elevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.” I.R.E. 401. The question of whether evidence is relevant is reviewed *de novo*, while the decision to admit relevant evidence is reviewed for an abuse of discretion. *State v. Shutz*, 143 Idaho 200, 202 (2006).

In this case, the identity of the person who sold marijuana to Mr. Pettit is not a fact that is of consequence to the determination of the action and is, therefore, irrelevant. Mr. Pettit was charged with possession of marijuana with the intent to deliver. The elements of possession with intent to deliver were:


1. On or about June 16, 2010,
2. in the State of Idaho,
3. the defendant, ALEX LEE PETTIT, possessed any amount of marijuana,
- and
4. the defendant either knew it was marijuana or believed it was a controlled substance, and
5. The defendant intended to deliver that substance to another.

(R., p.230.) The identity of "an older fellow named Joe," does not contribute anything making any of the five elements of possession with the intent to deliver any more or less probable. The information is completely irrelevant to the crime charged, and thus, the district court erred by requiring Mr. Pettit to testify to Joe's identity.

CONCLUSION

Mr. Pettit requests that this conviction for possession of marijuana with the intent to deliver be vacated and his case remanded for further proceedings.

DATED this 17th day of September, 2012.



JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17th day of September, 2012, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

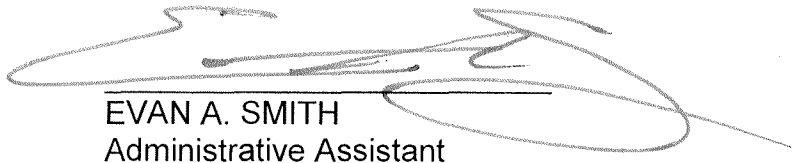
ALEX LEE PETTIT
469 WAKEFIELD ST
TWIN FALLS ID 83301

G RICHARD BEVAN
DISTRICT COURT JUDGE
E-MAILED BRIEF

GREG J FULLER
ATTORNEY AT LAW
E-MAILED BRIEF

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720-0010

Hand delivered to Attorney General's mailbox at Supreme Court.



EVAN A. SMITH
Administrative Assistant

JMC/eas